

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DANIEL C. BARNES, JR.,
Plaintiff

Case No. 1:11-cv-380
Weber, J.
Litkovitz, M.J.

vs

DON MORGAN, et al.,
Defendants

**REPORT AND
RECOMMENDATION**

Plaintiff, an inmate at the Southern Ohio Correctional Facility, brings this action under 42 U.S.C. § 1983 alleging a violation of his constitutional rights. This matter is before the Court on plaintiff's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). (Doc. 1). Plaintiff's trust fund account statement (Doc. 3) shows he has \$1,334.17 in his prison account, that the account's average monthly balance is \$856.90, and that his average monthly deposits are \$506.68. Accordingly, the Court is unable to conclude from plaintiff's motion and trust fund account statement that he is without sufficient funds to pay the full filing fee of \$350.00 in order to institute this action. *See Adkins v. E.I. DuPont De Nemours & Co., Inc.*, 335 U.S. 331, 339 (1948). Therefore, plaintiff's motion to proceed *in forma pauperis* should be denied.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's motion to proceed *in forma pauperis* be **DENIED**.
2. If this recommendation is adopted, that plaintiff be **GRANTED** an **EXTENSION OF TIME** of thirty (30) days from the date of any Order adopting the Report and Recommendation to pay the required filing fee of \$350.00. Plaintiff should be notified that his complaint will not be

deemed “filed” until the appropriate filing fee is paid, *see Truitt v. County of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998), and that if he fails to pay the filing fee within thirty (30) days this matter will be closed.

Date: 6/22/2011

s/Karen L. Litkovitz
Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).